

DENIAL OF FEDERAL BENEFITS
FOR CERTAIN DRUG OFFENDERS

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT PERTAINING TO DENIAL OF FEDERAL BENEFITS
TO DRUG TRAFFICKERS AND POSSESSORS
PURSUANT TO PUBLIC LAW 100-690
SECTION 5301(g)(1) (102 STAT. 4312)



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THE WHITE HOUSE
Washington, August 30, 1989

HON. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER:

The attached report sets forth a plan for the immediate implementation of section 5301 of P.L. 100 - 690, the Anti-Drug Abuse Act of 1988, pertaining to denial of Federal benefits for certain drug offenders. This report is submitted pursuant to the requirements of section 5301(g) of P.L. 100 - 690.

Effective for convictions occurring after September 1, 1989, section 5301 provides that an individual convicted of a State or Federal drug trafficking or possession offense may be denied Federal benefits for certain statutorily specified periods of time. Except for those individuals convicted of a third drug trafficking offense (in which case the exclusion from receipt of Federal benefits is both permanent and statutorily prescribed), the decision to deny any, some, or all of an individual's benefits in these instances rests solely with the sentencing judge. Certain benefits, such as welfare or disability payments, are statutorily exempted from coverage under this provision. In addition, benefits for government witnesses are exempted from suspension or denial, and benefits may not be denied an individual convicted of a drug possession offense who has been determined to be a drug addict and who has agreed to undergo long-term treatment or who may otherwise have been rehabilitated. In the case of an individual convicted of a drug trafficking offense, the range of benefits to be denied may not include those benefits related to long-term treatment. Section 5301 also requires that benefit eligibility be restored if an individual fulfills certain conditions relating to drug treatment and rehabilitation.

To implement section 5301, I am asking the United States Sentencing Commission to assist in the initial dissemination of information to the Federal courts, and the Department of Justice to assume the role of "information clearinghouse" for the Federal courts. Principal responsibility will rest with the Sentencing Commission to disseminate all necessary information concerning section 5301 to Article III Judges and other appropriate Federal personnel. An appropriate component in the Department of Justice will collect all incoming information generated by the courts regarding those individuals to whom benefits are to be denied, and will forward such information to the General Services Administration (GSA) for inclusion on that agency's publication of "Parties Excluded from Federal Procurement or Nonprocurement Programs" -- more commonly known as the "Debarment List."

I am directing the Department of Justice (DoJ) to coordinate the participation of the State courts in this program. The DoJ will request the assistance of the chief judicial officer of each State in directing that State's courts to collect and transmit to DoJ the necessary data on State court denials. The DoJ will also serve as the repository or "clearinghouse" of information for State courts and will forward such data to GSA for inclusion on the Debarment List.

Appropriate and uniform documents designed to serve as judicial notices of denial or suspension of benefits shall be developed. Information collected on these forms will be sent on a regular basis by the DoJ "clearinghouse" to GSA and will be incorporated by GSA into the Debarment List. At present, the Debarment List contains approximately 6,500 entries, consisting of those parties excluded throughout the United States Government from receiving Federal contracts or federally approved subcontracts and from certain Federal

benefits or other assistance. It is printed and distributed monthly to approximately 17,400 users, both in the Government as well as in the private sector. Under this proposal, the burden will rest with each agency to consult the Debarment List to ensure compliance with the provisions of the statute.

I understand that the statute permits a judge the discretion to deny all Federal benefits for a specified period of time (with the exclusion of those benefits exempted by statute from coverage under this provision). Utilizing the GSA Debarment List is the most efficient mechanism to implement such blanket suspensions, due to the thousands of different benefits -- including grants, guaranteed loans, contracts, and professional and commercial licenses -- that could be denied pursuant to section 5301. Additionally, an applicant for Federal benefits is required to certify that he/she is not subject to a judicial order that would bar their participation in Federal benefits.

The attached proposal is designed to be implemented September 1, 1989, or as soon thereafter as appropriate informational materials are distributed to the Federal and State judiciary and suitable denial forms developed. In order to avoid any potential problems under the Ex Post Facto Clause of the Constitution, the statute shall be applied to convictions occurring after September 1, 1989, that arise from offenses occurring on or after November 18, 1988. November 18, 1988, is the date of enactment of P.L. 100 - 690. Finally, I am directing the Office of National Drug Control Policy to monitor implementation of this proposal, and to determine if additional changes or modifications are required after 6 months to carry out the legislative intent effectively.

Sincerely,

GEORGE BUSH

PROCEDURES FOR IMPLEMENTATION OF §5301 OF P.L. 100-690

PHASE I: Dissemination of Information to Federal and State Courts

Federal Courts

In order to inform the Federal Judiciary of the nature and scope of this program, the U.S. Sentencing Commission, in its dissemination of sentencing guidelines to the courts, will include information relating to denial of Federal benefits pursuant to §5301. The function of the U.S. Sentencing Commission is to formulate sentencing guidelines as well as other sentencing policies and practices for the Federal criminal justice system. The Commission, in keeping with its mandate to develop means of measuring the effectiveness of sentencing and other correctional practices, is the logical mechanism to assume responsibility for this effort.

The following procedures will be utilized:

- o The Commission will inform all appropriate Federal officials in the Judiciary and Executive branches of government (Article III Judges, Chief Probation Officers, U.S. Attorneys, and Federal Defenders) of the provisions of the law and the administrative procedures adopted in conjunction with §5301.
- o In coordination with the Sentencing Commission, the Office of National Drug Control Policy (ONDCP), the Office of Management and Budget (OMB), the Department of Justice (DoJ), Federal Judicial Center, and members of the Judiciary, the Administrative Office of the United States Courts will develop a "Denial of Federal Benefits" form (Denial Form) suitable for use by the Federal courts and the Executive Branch, which will contain such information as: the name of the individual from whom benefits are to be withheld, additional means of identification to ensure conviction and the duration of denial, the signature of the sentencing judge and the court address. The Denial Form may be included as part of the Judgment and Commitment Order. An additional form will be developed to permit courts to reinstate Federal benefits pursuant to the statutory conditions relating to rehabilitation and treatment.

State Courts

The Department of Justice will communicate information to State Courts. Various organizational units within the Department support the States in the development and analysis of state-level criminal justice data and statistics, and provide assistance to States and units of local government and other organizations which assist in data collection of this nature.

The following procedures will be utilized:

- o DoJ will inform the Chief Justice and the Administrator of each State Court of the provisions of the law and administrative procedures adopted in conjunction with §5301. The State Court Administrator will be requested, at the Chief Justice's direction, to ensure timely dissemination of the information to all courts within their jurisdiction.
- o DoJ will develop a "Denial of Federal Benefits" form in the same manner and with the same scope as the one to be developed for the Federal Courts.
- o To assist in disseminating information regarding the Denial of Federal Benefits, the Associate Director for State and Local Affairs in the ONDCP will work closely with the offices of Chief Court Administrators and other appropriate state and local judicial entities as needed.

PHASE II: Judicial Action/Data Collection

- o In pronouncing sentence, the judge shall determine the range and scope of benefits to be denied. Consultation will occur between the defendant's legal counsel, the prosecutor, probation officials, and other appropriate parties so that informed recommendations regarding sentencing can be made to the judge in these cases, as with all other sentencing recommendations.
- o The judge, in his or her discretion, may deny or suspend eligibility on a benefit-specific basis. There are no restrictions on the range of benefits from which the judge may invoke the authority in this instance, other than those benefits specifically exempted from judicial denial by §5301. Such exempted benefits include certain welfare, health, disability,

and similar benefits. The following list of benefits are typical of the benefits that will probably be most often denied in these cases: Federally insured student loans, other educational grants issued by the Department of Education, individual loans or grants issued by the Small Business Administration, Federally insured mortgages and other housing loans authorized by the Department of Housing and Urban Development, Federal airman certificates for the operation of aircraft and performance of other aviation operations, and certain grants made to individuals by the National Endowments for the Arts and the Humanities.

- o A sentencing judge, in his or her discretion, may deem an individual to be ineligible for all Federal grants and benefits. Accordingly, a judge could issue a blanket denial of all benefits for a specified amount of time, including within the judicial order any and all exclusions to that blanket denial. This mechanism maximizes the flexibility of the judicial branch in determining sentences in particular cases. As mentioned above, a blanket denial of benefits imposed by the judge could not include those Federal benefits statutorily exempted from judicial termination or denial.
- o The courts will forward copies of the Judicial Orders and Denial Forms to DoJ, as the clearinghouse for these matters, on a regular basis.

PHASE III: Dissemination of Data to Relevant Federal Agencies

- o Consistent with the provisions of the Privacy Act of 1974 (5 U.S.C. 552(a)), DoJ, acting as the clearinghouse, will maintain records of all information received from Federal and State court officials, and will forward such data to GSA for inclusion of the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" (Debarment List).
- o GSA will add an additional "cause and treatment" code (with appropriate subcodes for implementation of partial benefit denials) to the Debarment List publication in both the procurement and nonprocurement lists, to reflect those individuals listed by virtue of §5301 violations. In serving as the clearinghouse for the judiciary, DoJ will serve as the lead contact point for any incoming questions or further information that may be needed pertaining to §5301 violations.
- o GSA will be responsible for the timely and accurate input of all data received from the Clearinghouses into the monthly debarment list publication.
- o GSA will continue in its current role of dissemination of the Debarment Lists to all interested parties. As currently required by regulation and Executive Order, each Federal agency will be responsible for checking the contents of the Debarment List for §5301 violations prior to the award to any Federal benefit.
- o Language contained in the current certification procedure in the Federal Acquisition Regulation for procurement programs and in the common rule established among the Federal agencies for nonprocurement programs, provides for individuals who apply for Federal grants, contracts, or benefits to certify that they have not been debarred, suspended, or otherwise declared ineligible for participation in such programs. We interpret this language to apply to debarments that occur as a result of a judicial order.
- o In those instances where denial of an existing benefit is at issue, each Federal department or agency having administrative authority to disburse Federal benefits under this provision will determine the manner and time frame for benefit termination. Applicable agency rules pertaining to benefit payments and other administrative matters vary considerably according to the agency and the benefit involved. For instance, termination of a Federal license may be conducted in a fashion separate from termination of other grants or contracts. Additionally, agency rules governing disbursement of education grants vary according to the requirements of particular programs, as do regulations concerning Federally insured loans. Accordingly, each agency will ensure that benefit termination occurs in an effective and expeditious manner which is appropriate to the targeted benefit and is reasonable under the circumstances.
- o Pursuant to §5301(b)(2) and (c), an individual may be reinstated for eligibility for Federal benefits, under certain conditions relating to drug treatment and rehabilitation. Once an individual is determined to again be eligible for such benefits, the court will note that fact on a "Judicial Notice of Restoration Form" and will forward a copy of such notice to the DoJ. DoJ will then notify GSA of the individual's renewed eligibility for Federal benefits, and that name will be removed from subsequent publications of the Debarment List.